

By Parker

S B. No. 608

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of polygraph examiners and the transfer of certain functions regulating polygraph examiners to the Commission on Law Enforcement Officer Standards and Education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Polygraph Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes) is amended by adding Section 1A to read as follows:

Sec. 1A. ADMINISTRATIVE FUNCTIONS TRANSFERRED. Certain functions relating to the administration of this Act are transferred to the Commission on Law Enforcement Officer Standards and Education in accordance with Chapter 415, Government Code. To the extent of a conflict between this Act and Chapter 415, Government Code, Chapter 415, Government Code, prevails.

SECTION 2. Section 4, Polygraph Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. MINIMUM INSTRUMENTATION REQUIRED. Any instrument used to test or question individuals for the purpose of detecting deception or verifying truth of statements shall record visually, permanently, and simultaneously: (1) a subject's cardiovascular pattern; [and] (2) a subject's respiratory pattern; and (3) a subject's galvanic skin response. Patterns of other physiological changes in addition to (1), [and] (2), and (3) may also be

1 recorded. The use of any instrument or device to detect deception
2 or to verify truth of statements which does not meet these minimum
3 instrumentation requirements is hereby prohibited and the operation
4 or use of such equipment shall be subject to penalties and may be
5 enjoined in the manner hereinafter provided. The sole use of a
6 voice stress analyzer, a psychological stress evaluator, or a
7 similar voice actuated instrument is prohibited regardless of the
8 semantics used to report the diagnostic opinions of the operator of
9 the device or instrument.

10 SECTION 3. Sections 5(b) and (k), Polygraph Examiners Act
11 (Article 4413(29cc), Vernon's Texas Civil Statutes), are amended to
12 read as follows:

13 (b) The board shall contract with the Commission on Law
14 Enforcement Officer Standards and Education [~~Department of Public~~
15 ~~Safety~~] for the administrative functions of the board that are not
16 transferred under Section 1A of this Act and Chapter 415,
17 Government Code, including the collection of all fees and money due
18 and the payment of all expenses, including travel expenses of board
19 members. Each member of the board is entitled to a per diem as set
20 by legislative appropriation for each day that the member engages
21 in the business of the board. A member may not receive any
22 compensation for travel expenses, including expenses for meals and
23 lodging other than transportation expenses. A member is entitled
24 to compensation for transportation expenses as prescribed by the
25 General Appropriations Act.

26 (k) A polygraph examiner licensed in this state must attend
27 not less than 40 hours of [~~The board--may--recognize,--prepare,--or~~

1 ~~implement~~] continuing education during every two-year period
2 ~~[programs-for-polygraph-examiners-and-trainees]~~. The board by rule
3 shall establish criteria for continuing education programs and
4 shall ensure that every license holder has the opportunity to
5 attend continuing education programs by either providing programs
6 or approving the programs offered by other sources [Participation
7 ~~in-the-programs-is-voluntary~~].

8 SECTION 4. Sections 6(d) and (e), Polygraph Examiners Act
9 (Article 4413(29cc), Vernon's Texas Civil Statutes), are amended to
10 read as follows:

11 (d) The financial transactions of the Commission on Law
12 Enforcement Officer Standards and Education [~~Department-of-Public~~
13 ~~Safety~~] that relate to the administration of this Act are subject
14 to audit by the state auditor in accordance with Chapter 321,
15 Government Code.

16 (e) On or before January 1 of each year, the Commission on
17 Law Enforcement Officer Standards and Education [~~Department-of~~
18 ~~Public-Safety~~] shall make in writing to the governor and the
19 presiding officer of each house of the legislature a complete and
20 detailed report accounting for all funds received and disbursed by
21 the commission [~~department~~] under this Act during the preceding
22 year.

23 SECTION 5. Section 8(a), Polygraph Examiners Act (Article
24 4413(29cc), Vernon's Texas Civil Statutes), is amended to read as
25 follows:

26 (a) A person is qualified to receive a license as an
27 examiner if the person previously held a license under this Act and

1 follows:

2 (e) If a person's license has been expired for two years or
3 more, the person may not renew the license. The person may obtain
4 a new license by submitting to reexamination [~~and-complying-with~~
5 ~~the-requirements-and-procedures-for-obtaining-an-original-license~~].

6 SECTION 7. Section 24A(b), Polygraph Examiners Act (Article
7 4413(29cc), Vernon's Texas Civil Statutes), is amended to read as
8 follows:

9 (b) Each written contract for the services in this state of
10 a licensed polygraph examiner and each waiver of liability that is
11 signed by the subject of a polygraph examination shall contain the
12 name, mailing address, and telephone number of the board. A waiver
13 of liability or a written consent and release form signed by the
14 subject of a polygraph examination must also include a request that
15 the subject authorize the polygraph examiner to disclose
16 information acquired from the polygraph examination to the board or
17 the board's representative to determine compliance with this Act.

18 SECTION 8. Subchapter A, Chapter 415, Government Code, is
19 amended by adding Section 415.016 to read as follows:

20 Sec. 415.016. ADMINISTRATION OF POLYGRAPH EXAMINERS;
21 DEFINITION. (a) In this section, "board" means the Polygraph
22 Examiners Board.

23 (b) The commission shall perform the following functions
24 that are necessary or useful to the administration of the Polygraph
25 Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes):

26 (1) data processing functions;

27 (2) personnel administration services, including the

1 administration of records relating to payroll, personnel files,
2 vacation and other leave records, employee insurance and other
3 benefits records, and employee applications;

4 (3) other recordkeeping functions; and

5 (4) functions related to the purchasing or other
6 acquisition of property.

7 (c) The functions transferred to the commission by
8 Subsection (b) are of an administrative nature. The transfer of
9 functions does not authorize the commission to make any decision
10 about whether a property acquisition should be made by the board
11 and does not authorize the commission to make personnel decisions
12 regarding board employees assigned to carry out the policy or
13 regulatory functions of the board such as the hiring, transfer,
14 termination of employment, or discipline of an employee. The
15 commission may make personnel decisions of that type regarding a
16 board employee assigned to perform any functions described by
17 Subsection (b).

18 (d) The board may not use its employees to perform a
19 function described by Subsection (b) and may not contract with
20 another entity to perform the function unless authorized to do so
21 by the commission.

22 (e) The commission may authorize the board to perform a
23 function described by Subsection (b) only if the board employees
24 are necessary to assist the commission in the performance of its
25 functions under Subsection (b) or if the commission finds in
26 writing that a significant financial savings to the state will be
27 achieved by the board's performance of the function. The finding

1 must be supported by evidence clearly showing the savings. The
2 commission shall monitor the board's performance of the function
3 and shall withdraw the board's authority to perform the function if
4 the significant savings do not occur.

5 (f) At the appropriate time in each state fiscal biennium,
6 the board shall prepare its recommended budget covering the board's
7 functions and shall submit that recommendation to the Legislative
8 Budget Board and the appropriate committees of the legislature.

9 (g) The commission annually shall review the budgeted
10 expenditure of and the fees collected by the board. The commission
11 and the board shall establish by contract the amounts of revenue
12 that must be collected by the board to recover:

13 (1) all the budgeted costs of the board;

14 (2) the board's pro rata share of the commission's
15 costs in performing functions for the board under this section; and

16 (3) all indirect costs incurred by the state in the
17 administration of the law under the board's jurisdiction, as those
18 costs are identified by a statewide cost accounting plan prepared
19 by the governor or, if the governor does not prepare such a plan,
20 as those costs are identified by the commission.

21 (h) The board shall set its fees in amounts that will
22 produce the amount of the revenue determined under Subsection (b).
23 The commission must certify to the comptroller of public accounts
24 that the board's fee schedule will adequately produce the revenues
25 before the board may expend any funds appropriated to the board.

26 (i) This section does not authorize the board to set a fee
27 in an amount that is not otherwise permitted by law. If the fee

1 schedule permitted by law is inadequate to produce adequate
2 revenue, the commission shall report that fact to the Legislative
3 Budget Board and the presiding officer of each house of the
4 legislature and shall request that legislation be prepared to
5 authorize the necessary revenue.

6 SECTION 9. (a) This Act takes effect September 1, 1993.

7 (b) The Commission on Law Enforcement Officer Standards and
8 Education shall begin performing the duties prescribed by Section
9 415.016, Government Code, as added by this Act, on a date after the
10 effective date of this Act determined by order of the commission.
11 Before that date, the Polygraph Examiners Board shall continue to
12 perform the functions transferred by that section. The Commission
13 on Law Enforcement Officer Standards and Education shall assume the
14 transferred functions not later than September 1, 1994.

15 SECTION 10. The importance of this legislation and the
16 crowded condition of the calendars in both houses create an
17 emergency and an imperative public necessity that the
18 constitutional rule requiring bills to be read on three several
19 days in each house be suspended, and this rule is hereby suspended.

LEGISLATIVE BUDGET BOARD

Austin, Texas

**FISCAL NOTE
73rd Regular Session**

April 5, 1993

TO: Honorable John Whitmire, Chair
Committee on Criminal Justice
Senate Chamber
Austin, Texas

IN RE: Senate Bill No. 608
By: Parker

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Bill No. 608 (relating to the regulation of polygraph examiners and the transfer of certain functions regulating polygraph examiners to the Commission on Law Enforcement Officer Standards and Education) this office has determined the following:

No significant fiscal implication to the State is anticipated.

No fiscal implication to units of local government is anticipated.

Source: Polygraph Examiners Board, Commission on Law Enforcement Officer Standards and Education;
LBB Staff: JO, JWH, EC, BML, JOL

S.B. No. 608

By Parker

A BILL TO BE ENTITLED

AN ACT: relating to the regulation of polygraph examiners and the transfer of certain functions regulating polygraph examiners to the Commission on Law Enforcement Officer Standards and Education.

3-3-93

MAR - 4 1993

Filed with the Secretary of the Senate

Read and referred to Committee on CRIMINAL JUSTICE

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent
_____ yeas, _____ nays

Read second time, _____, and ordered engrossed by: { unanimous consent
a viva voce vote
_____ yeas, _____ nays

Caption ordered amended to conform to the body of the bill.

Senate and Constitutional 3 Day Rule suspended by a vote of _____ yeas, _____ nays.

Read third time, _____, and passed by: { A viva voce vote
_____ yeas, _____ nays

SECRETARY OF THE SENATE

OTHER ACTION:

Engrossed

Sent to House

Engrossing Clerk _____

Received from the Senate

Read first time and referred to Committee on _____

Reported favorably amended, sent to Printer at _____

Printed and Distributed _____

Sent to Committee on Calendars _____

Read Second time (amended): passed to third reading (failed)

by (Non-Record Vote) Record Vote of _____ yeas, _____ nays _____ present not voting.

Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays _____ present not voting.

Read third time (amended): finally passed (failed) by a (Non-Record Vote) Record Vote of
_____ yeas, _____ nays _____ present not voting.

Caption ordered amended to conform to body of bill.

Returned to Senate.

CHIEF CLERK OF THE HOUSE

Returned from House without amendment.

Returned from House with _____ amendments.

Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by: _____

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

LEGISLATIVE BUDGET BOARD

CRIMINAL JUSTICE POLICY IMPACT STATEMENT

March 9, 1993

TO: Honorable John Whitmire, Chair
Committee on Criminal Justice
Senate Chamber
Austin, Texas

IN RE: Senate Bill No. 608
By: Parker

FROM: Jim Oliver, Director

In response to your request for a Criminal Justice Policy Impact Statement on Senate Bill No. 608 (relating to the regulation of polygraph examiners and the transfer of certain functions regulating polygraph examiners to the Commission on Law Enforcement Officer Standards and Education), this office has determined the following:

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

BILL ANALYSIS

Senate Research Center

S.B. 608
By: Parker
Criminal Justice
3-11-93
As Filed

BACKGROUND

In 1965, the 59th Legislature enacted the Polygraph Examiner Act, which created the Polygraph Examiners Board (board) and gave that board the responsibility of regulating the polygraph profession in Texas. Texas has the largest number of licensed examiners of any licensing state, and Texas is the only state that routinely inspects its licensees for compliance with state law. Many other states use Texas as a benchmark for the regulation of the polygraph profession.

PURPOSE

As proposed, S.B. 608 transfers certain functions regulating polygraph examiners to the Commission on Law Enforcement Officer Standards and Education and makes other provisions for the regulation of polygraph examiners.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is granted to the Polygraph Examiners Board under SECTION 3 (Section 5(k), Article 4413(29cc), V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 4413(29cc), V.T.C.S. (Polygraph Examiners Act), by adding Section 1A, as follows:

Sec. 1A. ADMINISTRATIVE FUNCTIONS TRANSFERRED. Transfers certain functions relating to the administration of this Act to the Commission on Law Enforcement Officer Standards and Education (commission) in accordance with Chapter 415, Government Code. Provides that to the extent of a conflict between this Act and Chapter 415, Government Code, Chapter 415, Government Code, prevails.

SECTION 2. Amends Section 4, Article 4413(29cc), V.T.C.S., as follows:

Sec. 4. MINIMUM INSTRUMENTATION REQUIRED. Includes a subject's galvanic skin response among those patterns an instrument is required to record for the purpose of detecting deception or verifying truth of statements. Prohibits the sole use of a voice stress analyzer, a psychological stress evaluator, or a similar voice actuated instrument regardless of the semantics used to report the diagnostic opinions of the operator of the device or instrument.

SECTION 3. Amends Sections 5(b) and (k), Article 4413(29cc), V.T.C.S., as follows:

(b) Requires the Polygraph Examiners Board (board) to contract with the commission for the administrative functions of the board that are not transferred under Section 1A and Chapter 154, Government Code.

(k) Requires a polygraph examiner licensed in this state to attend not less than 40 hours of continuing education during every two-year period. Requires the board, by rule, to establish criteria for continuing education programs and to ensure that every license holder has the opportunity to attend continuing education programs by either providing programs or approving programs offered by other sources.

SECTION 4. Amends Sections 6(d) and (e), Article 4413(29cc), V.T.C.S., to make conforming

changes.

SECTION 5. Amends Section 8(a), Article 4413(29cc), V.T.C.S., to provide that a person is qualified to receive a license as an examiner if the person previously held a license and meets the requirements for a new license under Section 17 of this Act or if, among other requirements, the person:

(2) has completed not less than 60 credit hours in a college or university or the equivalent amount of hours required for an associate degree from an accredited college or university; and

(3) is a graduate of a polygraph examiners course or a course in the science of psychophysiological detection of deception approved by the board.

SECTION 6. Amends Section 17(e), Article 4413(29cc), V.T.C.S., to make conforming changes.

SECTION 7. Amends Section 24A(b), Article 4413(29cc), V.T.C.S., as follows:

(b) Requires a waiver of liability or a written consent and release form signed by the subject of a polygraph examination to also include a request that the subject authorize the polygraph examiner to disclose information acquired from the polygraph examination to the board or the board's representative to determine compliance.

SECTION 8. Amends Chapter 415A, Government Code, by adding Section 415.016, as follows:

Sec. 415.016. ADMINISTRATION OF POLYGRAPH EXAMINERS; DEFINITION.
(a) Defines "board."

(b) Requires the commission to perform certain functions necessary or useful to the administration of the Polygraph Examiners Act.

(c) Provides that the functions transferred to the commission are of an administrative nature. Provides that the transfer of functions does not authorize the commission to make any decision about whether a property or acquisition should be made by the board and does not authorize the commission to make personnel decisions regarding board employees assigned to carry out policy or regulatory functions of the board. Authorizes the commission to make personnel decisions regarding a board employee assigned to perform any functions prescribed by Subsection (b).

(d) Prohibits the board from using its employees to perform a function described by Subsection (b) and from contracting with another entity to perform the function unless authorized to do so by the commission.

(e) Authorizes the commission to authorize the board to perform a function described by Subsection (b) only if the board employees are necessary to assist the commission in the performance of its functions under Subsection (b) or if the commission finds in writing that a significant financial savings to the state will be achieved by the board's performance of the function. Requires the finding to be supported by evidence clearly showing the savings. Requires the commission to monitor the board's performance of the function and to withdraw the board's authority to perform the function if the significant savings do not occur.

(f) Requires the board, at the appropriate time, to prepare its recommended budget covering the board's functions and to submit that recommendation to the Legislative Budget Board (LBB) and to the appropriate committees of the legislature.

(g) Requires the commission to review annually the budgeted expenditure of and fees collected by the board. Requires the commission and the board to establish by

contract the amounts of revenue that must be collected by the board to recover certain costs.

(h) Requires the board to set its fees in amounts that will produce the amount of the revenue determined under Subsection (b). Requires the commission to certify to the comptroller that the board's fee schedule will adequately produce the revenues before the board may expend any funds.

(i) Provides that this section does not authorize the board to set a fee in an amount that is not otherwise permitted by law. Requires the commission, if the fee schedule is inadequate to produce adequate revenue, to report that fact to the LBB. Requires the presiding officer of each house of the legislature to request that legislation be prepared to authorize the revenue.

SECTION 9. (a) Effective date: September 1, 1993.

(b) Requires the commission to begin performing the duties prescribed by Section 415.016, Government Code, as added by this Act, on a date determined by order of the commission. Requires the Polygraph Examiners Board to continue to perform the functions transferred by that section until that date. Requires the commission to assume the transferred functions not later than September 1, 1994.

SECTION 10. Emergency clause.